

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LANS SERVICE CORPORATION)	File No. 96F227
)	
Station WCC724,)	
North Bergen, New Jersey)	
Licensed to Interstate Grocer)	
Distribution Systems, Inc.)	

ORDER

Adopted: March 21, 2000**Released: March 23, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 7, 1999, Lans Service Corporation (Lans Service) filed a petition for reconsideration (Petition)¹ of the June 25, 1999, dismissal² of its finder's preference request targeting Station WCC724, licensed to Interstate Grocer Distribution Systems, Inc. (Interstate Grocer), located in North Bergen, New Jersey, by the Policy and Rules Branch (Branch), Public Safety & Private Wireless Division. For the reasons set forth below, the Petition is denied.

II. BACKGROUND

2. On June 13, 1996, Lans Service filed a finder's preference request (Request)³ targeting Interstate Grocer's authorization to operate Station WCC724 on frequency pair 478.6125/481.6125 MHz. Lans Service alleged in its Request that Interstate Grocer failed to operate Station WCC724 for a period in excess of one year, in violation of Section 90.157 of the Commission's Rules.⁴

3. On June 25, 1999, the Request was dismissed for failure to target a station that was properly the subject of a finder's preference proceeding.⁵ On July 7, 1999, Lans Service filed the instant Petition,

¹Petition for Reconsideration (July 7, 1999) (Petition).

²See Letter to George Petrutsas, counsel to Lans Service Corporation, from John J. Borkowski, Federal Communications Commission (June 25, 1999).

³Finder's Preference Request (June 13, 1996).

⁴47 C.F.R. § 90.157.

⁵See Letter to George Petrutas, counsel to Lans Service Corporation, from John J. Borkowski, Federal

requesting reversal of the June 25, 1999, action.⁶ Lans Service argues in its Petition that Station WCC724 was the proper subject of a finder's preference proceeding. Lans Service alleges that it could have acquired authority to operate two (2) mobile units on frequency pair 478.6125/481.6125 MHz, if the Request had resulted in a dispositive preference. Lans Service further argues that the interpretation of the Commission's *Report and Order* in PR Docket 90-481, which is relied upon in the June 25, 1999, letter, "is inconsistent with previous decisions where finder's requests for partial use of one or more channels in the 'exclusive' bands (*i.e.*, 220-225, 470-512, 800/900 MHz) have been entertained."⁷

III. DISCUSSION

4. Lans Service argues that Station WCC724 was the proper subject of a finder's preference proceeding. We disagree. Station WCC724 was authorized to operate in the 470-512 MHz shared band in the Motor Carrier Radio Service. A finder's preference can only be applied to frequencies in the 470-512 MHz band if the targeted frequencies were assigned on an exclusive basis.⁸ On the date Lans Service filed its Request, Station WCC724 was not operating on an exclusive channel, and was therefore not the proper subject of a finder's preference proceeding.

5. In this regard, we note that under the pertinent provisions of former Section 90.313(a)(5) of the Commission's Rules, the maximum channel loading on frequencies in the 470-512 MHz band in the Motor Carrier Radio Service at the time of filing of this Request was seventy (70) units.⁹ Our records reflect that there were sixty-eight (68) mobiles operating on shared channel 478.6125/481.6125 MHz at the time the Request was filed.¹⁰ Until the channel reached its maximum loading level, new applicants were eligible to be licensed on the same frequencies as Station WCC724, in the same geographic area, by submitting an application. The Commission specifically disallowed the filing of finder's preference requests involving channels that have not reached maximum loading.¹¹ The Commission stated:

Our analysis of the record confirms that employing the costly, resource-intensive effort required in submitting a finder's preference request is *only* justified if the

Communications Commission (June 25, 1999).

⁶See Letter to John J. Borkowski, Federal Communications Commission, from George Petrutsas, counsel to Lans Service Corporation (July 7, 1999).

⁷*Id.* at 2.

⁸See, *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations*, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7297, 7304 at para. 44 (1991) (*PLMRS Report and Order*).

⁹47 C.F.R. §90.313(a) (5) (1996).

¹⁰Interstate Grocer was authorized to operate twenty-two (22) mobile units on Station WCC724. K&D Transport, Inc. was authorized to operate forty-six (46) mobile units on Station WII598. The combined loading equaled sixty-eight (68) mobiles.

¹¹See *supra* n. 8.

frequencies acquired are exclusive assignments. As the *Notice*¹² explained, there can be no preclusion of eligible new applicants from being licensed on shared spectrum. A “preference” awarded to an applicant applying for a shared channel would, therefore, offer no *greater* opportunity for acquiring a particular channel than that which is “already available under current frequency coordination procedures.”¹³

6. The Commission further stated that it reserved the right to extend the application of finder’s preference to certain channels that were currently shared, if the burden of processing and investigating the additional finder’s preference requests could be absorbed by its staff. A decision to extend the application to shared channels was never made, and the Commission eliminated the finder’s preference program with respect to the 220-222 MHz band and in the 470-512 MHz, 800 MHz and 900 MHz Private land Mobile Radio bands as of July 29, 1998.¹⁴ While Lans Service argues that the Branch’s interpretation was inconsistent with previous finder’s preference requests, it failed to provide supporting case precedent to such effect.

7. Based on the record in this proceeding, we find no basis to reverse the Branch’s June 25, 1999, decision. We agree with the Branch’s determination that the subject station was not a proper subject for a finder’s preference proceeding because it was not operating on a channel being licensed on an exclusive basis.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and Sections 0.331 and 1.106 of the Commission’s Rules, 47 C.F.R. §§ 0.331 and 1.106, the Petition for Reconsideration filed by Lans Service Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

D’wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹²*Notice of Proposed Rule Making*, PR Docket No. 90-481, 5 FCC Rcd 6401 (1990).

¹³*See PLMRS Report & Order*, 6 FCC Rcd at 7304, ¶ 44, n. 79.

¹⁴*See Report and Order* 13 FCC Rcd 23816 (1998).